

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMAZON.COM, INC., and AMAZON DATA
SERVICES, INC.,

Plaintiffs,

v.

Case No. 1:20 Civ. 484

WDC HOLDINGS LLC dba NORTHSTAR
COMMERCIAL PARTNERS; BRIAN
WATSON; STERLING NCP FF, LLC;
MANASSAS NCP FF, LLC; NSIPI
ADMINISTRATIVE MANAGER; NOVA WPC
LLC; WHITE PEAKS CAPITAL LLC;
VILLANOVA TRUST; CARLETON NELSON;
CASEY KIRSCHNER; ALLCORE
DEVELOPMENT LLC; FINBRIT HOLDINGS
LLC; CHESHIRE VENTURES LLC; JOHN
DOES 1-20,

Defendants.

**MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT
BY DEFENDANTS CARLETON NELSON AND CHESHIRE VENTURES LLC**

As set forth in the memorandum of law filed concurrently herewith, Defendants Carleton Nelson and Cheshire Ventures LLC respectfully move under Federal Rule of Civil Procedure 12(b)(6) to dismiss all claims that Plaintiffs Amazon.com, Inc., and Amazon Data Services, Inc. (collectively, "Amazon") assert against them in the Second Amended Complaint, which was publicly filed at Dkt. 150 on September 18, 2020. Those claims include: (1) violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962; (2) detainment under Va. Code § 8.01-114; (3) fraud; (4) tortious interference with contractual and/or business relations; (5) civil conspiracy; (6) breach of contract; (7) unjust enrichment and constructive

trust; (8) conversion and constructive trust; (9) violation of the Robinson-Patman Act, 15 U.S.C. § 13; and (10) a request for a preliminary injunction.

“To survive a motion to dismiss” under Federal Rule of Civil Procedure 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Additionally, under Federal Rule of Civil Procedure 9(b), where the plaintiff alleges a claim sounding in fraud, it “must state with particularity the circumstances constituting fraud.” *United States ex rel. Nathan v. Takeda Pharms. N. Am., Inc.*, 707 F.3d 451, 455 (4th Cir. 2013).

Amazon has twice amended (and once corrected) its complaint. And it asserts that its Second Amended Complaint is the product of an “extensive” nine-month investigation. Yet its claims are still not particularly pled as to Nelson and Cheshire Ventures, and its allegations are contradicted by the exhibits Amazon attached to the complaint. Amazon’s federal claims under RICO and Robinson-Patman fail as a matter of law. Thus, this Court can, and should, dismiss the remaining state-law claims under 28 U.S.C. § 1367(c)(3). But even on the merits, those state-law claims require dismissal as well. The Second Amended Complaint’s claims against Nelson and Cheshire Ventures should be dismissed in their entirety.

Dated: October 9, 2020

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. On October 9, 2020, I will further send the document and a notification of such filing (NEF) to the following parties by e-mail:

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